DOCUMENT RESUME

ED 196 653 SE 032 997

AUTHOR Silberfeld, Roman M.: Hecht, Richard L.
TITLE Legal Rights of Asbestos Exposure Victims. A Practical Legal Guide for People With Breathing and Other Medical Problems, Possibly Resulting from Exposure to Asbestos.
PUB DATE 80
NOTE 14p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Environmental Education: Guides: Health Education: *Legal Aid: *Legal Problems: Medical Services: *Occupational Diseases: Safety
IDENTIFIERS *Asbestos: Occupational Health

ABSTRACT

This practical legal guide for people with breathing and other medical problems, possibly resulting from exposure to asbestos, provides 19 questions and detailed answers about Asbestosis and other diseases resulting from asbestos exposure. Included is information concerning symptoms, difficulty of diagnosis, necessity of a detailed "history," obtaining environmental data, occupational hazards, hazards to the general public, what legal rights are available, lawyer's fees, court costs, financial needs of Asbestosis victims, and other related legal information. (Author/CS)

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LEGAL RIGHTS OF ASBESTOS EXPOSURE VICTIMS

A practical legal guide for people with breathing and other medical problems, possibly resulting from exposure to asbestos

by
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and
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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Published and Distributed
by
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Los Angeles, California 90048
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19 questions and detailed answers about Asbestosis and other diseases resulting from asbestos exposure, including symptoms, difficulty of diagnosis, necessity of a detailed "history", obtaining environmental data, occupational hazards, hazards to the general public, what legal rights are available, do you need a lawyer, how to find the right lawyer, how lawyers charge fees, how much can be recovered, court costs, financial needs of Asbestosis victims, how long until trial, deadlines for filing suit.

SE 032 997

ABOUT THE AUTHORS:

ROMAN M. SILBERFELD, a member of the Los Angeles firm of Irmas, Simke & Chodos, graduated with honors from U.C.L.A. and was an associate Editor of the Law Review of Loyola University School of Law. He is a member of the Los Angeles Trial Association, The California Trial Lawyers Association, and the Association of Trial Lawyers of America.

He specializes in complex personal injury litigation including product liability cases, automobile accidents, construction accidents, professional malpractice cases, harmful substances and drug cases, and at present is actively litigating over 100 cases involving asbestos exposure.

RICHARD L. HECHT is a practicing attorney and author of law related publications.

QUESTION: What exactly is the purpose of this booklet?

ANSWER: We'd like to encourage people who may be suspicious about exposure to asbestos in the past, or who have developed signs and symptoms pointing to asbestos related disease, to find out if they've been victimized by this dangerous mineral and if so, to pursue their legal rights.

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QUESTION: What symptoms make you suspicious of asbestos exposure disease?

ANSWER: The earliest and most prominent sign of Asbestosis is a shortness of breath when you've exerted yourself. If you've had this problem or have previously been diagnosed as having lung cancer, mesothelioma, cancer of the colon or rectum, stomach, kidney, or larynx, you really ought to engage in a serious medical dialogue with your physician in order to determine whether or not you *could* be a victim of asbestos exposure.

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QUESTION: But even if I have one of these medical problems, isn't it rather a long shot that it is related to asbestos?

ANSWER: Not as long a shot as you might believe. Joseph Califano, former secretary of Health, Education and Welfare, once estimated that eight to eleven million workers in the United States have been exposed to asbestos and that roughly 17% of all deaths from cancer for many years to come will be the result of past exposure to asbestos.

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QUESTION: Is Asbestosis easily diagnosed?

ANSWER: No. A positive and unqualified diagnosis of Asbestosis can rarely be made. Instead, the physician usually acts upon the symptoms shown by the patient, takes x-rays, makes studies designed to detect impairment of breathing, and takes a "history" (interview) in which you should try to remember any exposure to asbestos in the past. On rare occasions, a physician is able to further confirm the diagnosis by identifying asbestos fibres or asbestos "bodies" taken from body tissue.

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QUESTION: I have this "shortness of breath" you mention, but it never before occurred to me that it might be related to a short period of work with asbestos in a shipyard 20 years ago. I received a full medical checkup last week but my doctor didn't ask about and I didn't volunteer this information. Should I mention it to him?

ANSWER: Even though a few doctors are going to resent attempts at "self-diagnosis", we believe that you *should* take the initiative and mention this fact to him. As one expert has said in telling doctors to take a good "history"

> The taking of a good occupational history is important. . .patients. . .whose exposure was not so explicit or who were exposed for relatively short periods of time in the past, may not volunteer the information unless carefully questioned; they may even have forgotten about it. Careful exploration of the patient's occupational history is essential, and the possibility of neighborhood or family exposure. . .has to be born in mind." (ASBESTOS & DISEASE by IRVING J. SELIKOFF & DOUGLAS H.K. LEE page 151)

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QUESTION: Are you suggesting then that the doctor's diagnosis will depend upon what I tell him about my past exposure to asbestos?

ANSWER: Absolutely. What you tell the doctor may provide 50% of the diagnostic evidence that he will have.

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QUESTION: The only exposure I have had to asbestos was living near an asbestos manufacturing facility many years ago. Could a doctor make a diagnosis based just upon this evidence?

ANSWER: Probably not. . .although he'll certainly want to make some tests and he'd sure like to have statistics showing just how much asbestos you were exposed to. But here's where the rub comes in. . .no one is exactly sure how much exposure and inhalation of asbestos fibres or dust is necessary to cause Asbestosis. Some commentators believe that a single exposure would be sufficient, while other studies show that certain individuals are capable of inhaling large amounts of asbestos over a period of years without any untoward results.

There are, however, some guidelines and it may be of tremendous assistance to your doctor if he were furnished data showing asbestos levels in the atmosphere at or near the place you were living. If you decide to consult a lawyer, and he's a specialist in this type of case, he'll no doubt try to obtain atmospheric and other studies which might have been conducted by municipal, state or federal authorities during the years when you think you were exposed. These studies may in fact confirm that you were exposed to asbestos in a high concentration. On occasion and assuming that your doctor has a strong suspicion of asbestos

exposure disease but is unable to confirm it, a lawsuit might be initiated and your lawyer using "discovery procedures", may be able to force the company being sued to turn over its own records showing such high concentration. Once these have been obtained, your doctor may then be able to make a more positive diagnosis.

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QUESTION: How does one get exposed to asbestos?

ANSWER: Mostly from jobs held in the past. It is estimated that approximately 5000 former and current workers in just one shipyard in California (shipyards were big users of asbestos for insulation) have been subjected to sufficient amounts of asbestos so as to entitle them to recover damages. At present about 800,000 tons of asbestos are used every year in the U.S.A. for over 3,000 products, including brake linings, clutch facings, and insulation materials. *Exposed persons include those actually mining and extracting the mineral in its natural form, truck drivers and other transporters, factory workers in places using asbestos as one of the raw materials, wholesalers, retailers, and other dealers in the product, consumers of it, and families of each of the groups which might be exposed through individuals having traces of the mineral on his person or clothing. Demolition workers on projects involving buildings with old asbestos insulation may be receiving extremely high dosages of the fibre. Add to this, people living near any place where asbestos is either mined, transported, manufactured or sold, and you can see the magnitude of the problem.*

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QUESTION: Aren't you saying that just about the entire general public is at risk?

ANSWER: Well we certainly don't want to scare anyone but the research and medical literature we've analyzed certainly suggest that. Asbestos fibres might be deposited in the air, or the water that we drink simply by building a road through an area in which asbestos is contained in rock. Studies at atmospheric polution in the vicinity of asbestos mines and mills in Finland have shown small amounts of asbestos dust as far as 27 kilometers (17 miles) away. Asbestos fibres in water can move several hundred miles or more in a lake. High concentrations of asbestos may be found near braking vehicles, in buildings in which asbestos spray products have been used, and in the cars and homes of asbestos workers, and it may be inhaled by persons who install their own asbestos roofing or flooring or who repair such items as automobile brakes and clutches, home heating and plumbing systems, wire toasters, and waffle irons, or the walls of their homes.

Remember too, that it's the *airborne particles* that present the risk. Present evidence suggests that dangers from asbestos in buildings are likely to arise only when products containing asbestos are damaged, either accidently or during maintenance or repair, and the asbestos fibres are consequently released and disbursed in the air.

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QUESTION: Are you saying that a normal person with no medical problems should be suspicious of Asbestos Exposure Disease?

ANSWER: No. First of all, even though you might have been exposed to asbestos dust, none might have been retained in your body. Even if it was, while it may be clear evidence that you have

been exposed to it, it does not necessarily mean that you are suffering from asbestos related disease, or, that any disease present is due to asbestos. Once you have recognized that you have been exposed, the only thing you can do, is watch out for and be observant to the signs and symptoms of Asbestosis and if you contract any type of cancer, be sure to explore fully with your doctor the possibility of it being related to asbestos.

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QUESTION: My doctor has told me that in his opinion my shortness of breath and other symptoms are probably due to asbestos exposure resulting from my employment in the 40's. What are my legal rights?

ANSWER: People who are wholly or partially disabled as a result of asbestos exposure are entitled under various circumstances to compensation under state and/or federal compensation laws (assuming the contact occurred during employment) and are usually also entitled to sue the manufacturers and distributors of the asbestos product for money damages. Families of persons who have died as a result of asbestos exposure disease are also entitled to compensation, and to sue.

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QUESTION: Do I really need the help of a lawyer in seeking compensation and other relief?

ANSWER: While there are some legal actions that a person could take without a lawyer with little risk, we believe that the expertise required to establish the existence, extent, and effec

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the exposure and to prove liability, make it most desirable to have the services of an attorney and probably someone quite specialized in this area.

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QUESTION: How do I find the right lawyer?

ANSWER: It is highly unlikely that a general practioner non-specialist lawyer with no particular background or experience in asbestos litigation would be willing to undertake the necessary investment in time and money that would be required to litigate a single case. This means that the average "family" lawyer will either "refer" the case to one or more other lawyers presently handling this type of litigation or will make some sort of arrangement with such lawyers to divide up the work and responsibility with the result that the client pays no more for the specialist than he would have for anyone else. It would, therefore, seem smart for a claimant to encourage his family lawyer to associate with someone having such expertise. Another benefit is that the specialist who is simultaneously handling a number of cases may be able to significantly reduce the costs of litigation for each individual client.

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QUESTION: Who do I sue?

ANSWER: In order for a court to award any monetary damages (except in federal and state workmen's compensation type cases) we must be able to show that some person or company did something "wrong". In asbestos litigation, this usually means showing that the asbestos manufacturers, distributors, retailers, etc. should have been aware of the scientific studies which took place in the 1920's and 30's showing that

indeed asbestos was a very dangerous material, and that they should have warned the general public and especially those people who were working with the product, of the dangers. These contentions have been made in literally thousands of lawsuits which have been filed throughout the United States and continue to be filed at the rate of approximately 1,600 per year.

How good your case is will depend upon a variety of factors. Is the diagnosis of the disease a "clear" one or could it be fairly argued that your present condition is not due to asbestos exposure? How long an exposure to asbestos products can you prove? A shipyard worker (such workers have been exposed to high concentrations of asbestos dust) has a better chance of proving exposure than say an auto brake mechanic. If you're a family member of a diseased exposure victim, post-mortem examination may provide additional certainty of diagnosis. . .actual asbestos fibres will often be found in body tissue. Then, after we've determined just how provable it is that your condition was indeed caused by asbestos exposure, we still have got to be able to point our finger at that company or those companies directly responsible for allowing the exposure to occur. This may be simple if for example, we are suing a shipyard which bought from a single supplier, or it may be extremely complicated if the shipyard bought from many suppliers.

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QUESTION: How do lawyers calculate and charge fees for this type of case?

ANSWER: Although, lawyers can and often do charge an hourly fee ($50.00 - $250.00 per hour) or a "fixed" or "flat" fee

(a predetermined amount for the work performed), they generally accept cases of the type described in this booklet on a "contingency" basis. . .that is, a percentage of the amount actually collected for the client. . .if there is no recovery the lawyer receives nothing.

While the percentage charged can vary from 20% to 50% depending upon the difficulty of proving the case (less in workmen's compensation cases) the most common percentage quoted and charged is one third (33 1/3 percent) of the net recovery to the client.

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QUESTION: If I sue, how much money would I receive?

ANSWER: That's too tough a question to answer. . .the largest jury award to date is believed to have been $1,200,000. . .but there are just too many uncertainties to allow us to draw a chart which could be used to predict the amount you could recover. Just how much a jury would give you if you won, depends on how badly you've been injured. If you're a sixty year old former shipyard worker with Asbestosis and unable to work, you'd ask the jury for amounts sufficient to cover medical bills in the past and in the future and to replace lost earnings up to the assumed time of retirement, and, of course, an additional amount for pain and suffering. Since at the present time there is no known treatment for Asbestosis, you might ask the jury to consider awarding an amount which would be used should some future treatment become available, but you'd probably concentrate on convincing the jury to award enough money to cover all of the costs of nurses, household help, and assistance in performing those life functions which would become more and more difficult to perform if the disease progresses.

QUESTION: I've heard that if I lose a lawsuit I can get stuck with substantial court costs. Is this true?

ANSWER: A person bringing a lawsuit should always consider that he may personally have to pay two kinds of court costs. . .those paid by him or advanced by his lawyer for the prosecution of *his* case and those which in the event of a loss, are assessed by the court for the benefit of the winning opponent. While some specialist lawyers are able and willing to tacitly "absorb" them (by simply writing them off as uncollectable), probably none are willing to guarantee to any client that they will indemnify or pay opponents costs. Because of collection difficulties, however, opponents costs are often forgotten by the opponent, or simply waived in order to secure abandonment of the right to appeal or take further action. Furthermore, it must be considered that the vast majority (over 90%) of personal injury claims asserted in the U.S. are settled by compromise and negotiation instead of trial, so in terms of the probability of a claimant getting stuck with costs, the risk is a small one.

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QUESTION: If there is no known treatment or rehabilitative process, what good would the money do me?

ANSWER: Money is always an imperfect tradeoff for the loss of one's health, but let's face it. . .Asbestosis often takes away the victim's ability to work, do household chores, and perform all of the other activities that go to make up an active life. Such a person may now or in the future, require nurses, maids, household assistance, chauffeurs, and other individuals to help, and this kind of assistance is expensive. A substantial jury verdict will often provide the funds necessary to enable the victim to pay for it.

QUESTION: If I sue, how long will it take me to make a settlement or go to trial?

ANSWER: Depending on the geographical area and the type of recovery you seek, this time period could be as little as one year and sometimes as long as five years, but we would estimate that a nationwide average would be approximately thirty to forty months.

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QUESTION: I've heard that there are deadlines for filing suit or taking other legal action. How do I know that I still have time to sue?

ANSWER: You can't be sure. Most states have a law which permits suit to be filed within a certain period after "discovery" of the illness. Consequently, once a doctor has told you that in his opinion you have Asbestosis or that some medical condition diagnosed is attributable to asbestos exposure, or even if you discover facts which would make an average person suspicious, the time begins running and you'd better consult a lawyer quickly.

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QUESTION: I believe I contracted Asbestosis while working at a shipyard in Long Beach, California but since retirement, I now live in Arkansas. Do I have to return to California to sue?

ANSWER: No. . .you *can* file suit in just about any state where the manufacturer of the asbestos is doing business but since it is good strategy for a claimant to file suit in a jurisdiction with a tradition of generosity to injured persons (like California) you'll probably want to file suit there.

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